

### **REMARKS**

This responds to the Final Office Action mailed on March 2, 2005. This is also being accompanied with an RCE and IDS.

Claims 1, 22, 37, 49-50, 53, 63, 71-73, 83, and 92-94 are amended, claim 12 was previously canceled; as a result, claims 1-11 and 13-94 are now pending in this application.

Applicant does not believe the amendments introduce any new matter. Therefore, entry of these amendments is appropriate for the RCE that accompanies this. Furthermore, Applicant would like to point out that Claim 49 was amended to correct a typographical error in the original filed claim which had identified claim 3 as the dependency rather than claim 37, which is the proper dependency for claim 49.

### **§101 and §112 Rejections of the Claims 22-36**

Claims 22, 24-25 and 29 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Also, claims 22-36 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

Applicant notes that the Examiner appears to suggest that because claim 22 can be implemented in as a method, an apparatus, and computer code that it is deemed non-statutory. Applicant disagrees with this analysis, because the claim as previously amended was restricted to a computer-implemented media. The fact that the method may be implemented as an apparatus that performs the method or as software that performs the method does not render the method invalid for purposes of statutory analysis. It was implemented in a computer-readable medium, which by definition takes it out of the manual technique suggested by the Examiner (*i.e.* via pencil and paper).

Moreover, software is not per se non statutory as the Examiner has incorrectly asserted in the Final Office Action. In fact, software is per se statutory. The Applicant could recite a laundry list of court cases where the federal courts have with unanimity declares that software statutory subject matter.

As one example for the proposition that it has long been established that software implementations including programs and codes embodied in a computer medium are inventions

which are entitled to patent protection and thus are considered patentable subject matter, the Examiner's attention is directed to *In re Alappat*, 33 F.3d 1526 (Fed. Cir. 1994) (*en banc*). In *Alappat*, software was deemed a logic circuit which is implemented in a computer and thus entitled to protection under the patent laws. In fact, if a claimed invention as a whole produces a useful concrete and tangible result, then the invention is patentable. (*State Street Bank & Trust v. Signature Financial Group*, 149 F.3d 1368 (Fed. Cir. 1998). Moreover, the Examiner has conceded that claim 22 produces a useful and concrete result in the Final Office Action. Furthermore, even business methods embodied in a computer media are properly classified as processes entitled to patent protection under § 101.

Applicant notes that the Existing MPEP comports with these court cases as well. If the Examiner is asserting a changed policy or interpretation, such a change has not been communicated in the MPEP or in any known court case that Applicant is aware of. Applicant respectfully requests that the Examiner direct applicant to a single court case or MPEP reference where software is deemed per se non statutory or to a requirement that the computer-implemented has to be recited in the body of the claim. If this requirement asserted by the Examiner did exist that no business method patents would exist at all. The Examiner knows that this is not the case and knows that business method patents are statutory-based. The present claims are therefore even more so statutory since they are not business methods but rather software based.

Applicant respectfully asserts that the Examiner has misapplied sections 101 and 112 with respect to independent claim 22. Applicant also believes that no amendment was necessary to successfully overcome the Examiner's arguments with respect to this; however, to make this point clearer claim 22 is amended to recite "A computer-implemented method."

Applicant believes that these rejections were inappropriate in the first instance and even more so in view of the above amendments with respect to claim 22, and Applicant respectfully requests that the rejections be withdrawn. If the Examiner continues to assert this, Applicant respectfully requests a specific MPEP reference and/or a court case upon which the Examiner's authority rests for maintaining these rejections and the conclusions associated therewith.

*§103 Rejection of the Claims*

The claims were rejected based on various proposed combinations of Falk, Fuerst, Harrington, and/or Bayer. The Examiner primarily relied on Fuerst and Falk combinations for the proposition that online feedback related to an online transaction was taught. In each of these references individually and in combination, the surveys submitted to users related to interactions where the entity supplying the surveys is in fact one of the users. That is, the references fail to teach surveys that are generated and supplied independent of the users. Applicant's amended independent claims now recite a limitation where the feedback is independent of the users. That is, with Applicant's invention the feedback is provided by a third party or a party that is independent of the users. This cannot be achieved in the references cited by the Examiner, since the surveys have to originate from one of the parties participating in any alleged online transaction.

Thus, Applicant respectfully requests that the rejections with respect to these references be withdrawn and the pending claims in this Application be allowed.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

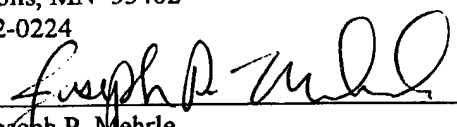
Respectfully submitted,

BARRY BOONE

By his Representatives,

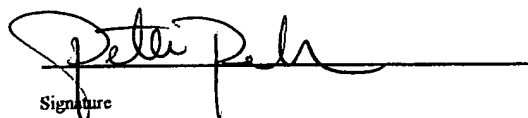
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Date 5-01-05

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 2 day of May, 2005.

Peter Ribuffanti  
Name

  
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